Filed 12/21/09 T.M. v. Super. Ct. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

T.M., Petitioner, v. THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent; ALAMEDA COUNTY SOCIAL SERVICES AGENCY et al., Real Parties in Interest.	A126318 (Alameda County Super. Ct. No. HJ08010777)

T.M., the mother of baby girl Z.M., petitions under California Rules of Court, rule 8.452 to vacate the trial court's order setting a hearing under Welfare and Institutions Code section 366.26[1] to consider termination of her parental rights. Mother contends the evidence fails to support either (1) the court's finding that reasonable reunification services were provided to her, or (2) denial of her request that Z.M. be placed with the child's maternal grandmother. Our careful review of the record leads us to conclude that Mother's contentions are unsubstantiated. Mother was offered, but did not avail herself, of reunification services that were tailored to her cognitive and mental health needs. There was substantial evidence supporting the court's decision to place Z.M. with someone other than her maternal grandmother. The petition is denied on the merits.

[1] All further statutory references are to the Welfare and Institutions Code.

BACKGROUND

I. *Detention, Jurisdiction and Disposition*

Z.M. was placed in protective custody on September 5, 2008, due to concerns that Mother was unable to care for her. The Alameda County Social Services Agency (the Agency) alleged in a petition that Mother's mental health and cognitive problems prevented her from caring for Z.M.; that Z.M.'s father was incarcerated; and that Z.M. was subjected to the same deficient parenting as her sister, N.M., who was removed from Mother in 2007 and placed with the maternal grandmother.

The juvenile court ordered Z.M. detained. In its report for the jurisdiction and disposition hearing, the Agency recommended that Z.M. be declared a dependent of the juvenile court and placed out of Mother's care while Mother be provided reunification services.[2] Z.M.'s pediatrician, Dr. Demetra Panomitros, was concerned about Mother's ability to care for the baby, and asked Mother to bring the child in every week. Dr. Panomitros said Mother was unable to follow instructions on how to make up infant formula. She asked Mother to bring Grandmother to the appointments, but Grandmother attended only once and left early.

Mother's cousin, Shannon W., told the caseworker that Mother had been living in her home intermittently for two or three years. Shannon said Mother "can barely" take care of herself, let alone care for her child. She felt Mother "doesn't get a lot of things," does not absorb information, and does not reason like an adult. As an example, Shannon said that if she told Mother not to touch a hot stove, Mother would say "okay" but then turn around and touch it. If asked why, Mother would say "I don't know."

The child welfare worker for Z.M.'s older sister, N.M., reported that in N.M.'s dependency case the Agency recommended termination of reunification services due to Mother's continuing inability to care for her. That recommendation was contested and Mother was still receiving services in N.M.'s case.

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[2] The report did not recommend services for the alleged father, who has not petitioned for review of the juvenile court's orders.

On September 12, 2008, Mother was an hour and a half late for a visit with Z.M. because, Mother said, she "could not get up early enough." Once she arrived, she did not interact with Z.M. Mother arrived an hour late for a visit the following week, long after the foster mother left with Z.M.

On September 15, the Agency referred Mother to the "Through the Looking Glass" program for developmentally appropriate services. Through the Looking Glass told the Agency it could provide services for Mother, but would first need to conduct an evaluation as to whether Mother was capable of learning and providing care for the minor. A clinician was to work with Mother in early November.

The Agency also contacted the Regional Center of the East Bay (Regional Center). The caseworker was told that Mother had previously been referred there for an assessment, but that she did not follow through with an intake interview.

A contested jurisdiction and disposition hearing was held on November 10, 2008. The Agency filed an addendum report that day recommending that reunification services to Z.M. be denied based on both parents' failure to reunify with N.M. Mother was visiting with Z.M. for two hours each week, but she still showed little or no interest in the child and was "more occupied with texting or talking on the cell phone than engaging with the minor" during the visits. She did not look at or talk to Z.M. when she held her. Grandmother wished to have Z.M. placed in her care, but the caseworker told her it would not happen because Grandmother had a family reunification case pending involving one of her other children.

The juvenile court found true the allegation of failure to protect, ordered reunification services for both parents, and set the matter for a progress report hearing on February 10, 2009, and a report and review hearing on April 28, 2009.

II. *February 9, 2009, Interim Review Report*

On February 9, 2009, the Agency filed an interim review report recommending continuation of all prior orders. Mother was said to be in "minimal compliance" with her case plan and missed or was consistently late for visits with Z.M. When the two did visit, their interaction "seemed unnatural as there was not very much playing or talking."

Mother seemed not to know how to engage her daughter and had difficulty taking direction from a parenting evaluator from Through the Looking Glass who tried to help. The parenting evaluator terminated her services after Mother was significantly late or missed a number of appointments. Mother's case file at the Regional Center was closed due to her failures to follow through with telephone intakes and scheduled appointments. Mother told her caseworker that a parent advocate appointed to help her had closed the case.

On January 22, 2009, Mother attacked and threatened to kill Grandmother in Grandmother's home. She was involuntarily hospitalized after the incident for observation. Grandmother told the caseworker that Mother had repeatedly been admitted to the hospital, and that she refused to take her psychiatric medication.

Mother completed a parenting class and previously underwent a psychiatric/psychological evaluation in October 2007. But she failed to follow through on numerous referrals for general counseling and psychotropic medication evaluation and monitoring.

III. *May 5, 2009, Status Report*

On May 5, 2009, the Agency filed a status review report recommending that the juvenile court terminate reunification services and set a hearing pursuant to section 366.26. Mother was still minimally compliant with her parenting plan and she continued to miss and be late for visits with Z.M. The caseworker reviewed Mother's case plan with her four times in the prior two months to ensure Mother had the necessary referrals and was making adequate progress. Mother was referred for a new psychiatric/psychological evaluation, but Mother missed the appointment even after the caseworker explained its importance to her and that it would take months to get another appointment if she failed to show up as scheduled. Mother also failed to follow through on a re-referral for a medical evaluation.

Mother kept five of eight scheduled appointments with the parenting evaluator at Through the Looking Glass. The evaluator reported that Mother did not show the practical parenting skills needed to care independently for Z.M., and recommended that

Mother receive psychiatric services, medication, and individual specialized training in parenting. Mother's caseworker consulted with the Regional Center six times between February and April 2009 regarding Mother's application for services, scheduled an intake appointment, and arranged transportation to ensure Mother would complete her application.

The Agency recommended against placing Z.M. with Grandmother, primarily due to Grandmother's limited understanding of the reasons Z.M. was in foster care. It was reported that she believed Mother was capable of caring for her children on her own even after Mother attacked Grandmother in her home. A report from Elizabeth Walser, a clinical social worker and mental health specialist with Children's Hospital's SEED program[3] echoed the social worker's concerns. Walser reported that Grandmother felt Mother was taking care of Z.M. "just fine" when Z.M. was removed, and believed Z.M.'s removal was wrong. Walser wrote: "The grandmother does not see any concerns with [Z.M.] at this time, and did not understand the need for specialized services. She discussed a bit about her parenting, stating that at this time, she did not have a discipline strategy with the two year old because she rarely misbehaved. She queried about the CPS rule of not hitting children, then stated that she does not hit the two year old. She stated that when she was raising her other children, all she had to do was hang the belt around her neck and they would get the idea and stop misbehaving. During our discussion, the two year old was climbing around and playing with toys. She threw a toy repeatedly until finally the grandmother became frustrated and took the toy away and slapped her hand. This interaction left the observer with the impression that there are unresolved parenting issues in the home, but that the grandmother is so guarded that she will not admit to them nor ask for help." Walser expressed "sincere concerns about the emotional and physical safety of this possible placement."

[3] The SEED program is a collaboration between Oakland Children's Hospital and Alameda County Child and Family Services to provide coordinated social services and developmental and psychological services to young children who are court dependents.

IV. *June 8, 2009, Addendum Report*

On June 8, 2009, the Agency reported that Mother missed her initial meeting with her new caseworker because "[m]ornings are too difficult to meet" and she preferred to sleep in. The caseworker rescheduled the meeting for an afternoon appointment at a location more convenient for Mother, but again Mother failed to attend. On May 21, 2009, Mother arrived at Grandmother's home smelling of alcohol and attacked Grandmother with a knife. Mother was restrained by her aunt until the police arrived and placed her under a 72-hour protective hold pursuant to section 5150. When Grandmother was asked if she understood that Mother's behavior posed a risk of harm to Z.M. and the other children in the home, Grandmother responded that her "daughter just lost her temper."

V. *The Hearing*

After several continuances, a contested hearing began on July 28, 2009. The court heard testimony from Dr. Deborah Roberto, an expert witness for the father on "child development and family dynamics and resources as they relate to the needs of children," in support of the parents' request that Z.M. be placed with Grandmother. While Dr. Roberto was generally supportive of the parents' request, she was concerned about Mother's access to Grandmother's home and Grandmother's possible inability to protect Z.M. from Mother. Dr. Roberto also questioned Grandmother's statement that she never physically punished her children because two of Grandmother's daughters had reported that she hit them. Grandmother repeated to Dr. Roberto her comment that she did not need to hit the children because "all she had to do was hang the belt around the neck."

On September 3, 2009, the Agency filed a new interim review report. Mother had missed a scheduled case planning meeting on August 18, 2009, and did not return numerous phone messages from the caseworker who was attempting to reschedule the meeting. Mother also missed all but one of her scheduled visits since late July. She did, however, complete her assessment for the Regional Center, and was notified on August 25, 2009, that she qualified for Regional Center services.

The caseworker concluded that Mother failed to take advantage of the reunification services provided to her, had not demonstrated that she would follow through with services offered by the Regional Center, and failed to obtain treatment for her mental health problems. The caseworker recommended against placing Z.M. with Grandmother in light of her inability to protect Z.M. and her failure to acknowledge how Mother's mental health condition placed Z.M. at risk.

At the September 3, 2009, hearing, the Agency observed that Mother had not progressed toward reunification despite having received an extra three months of services due to delays in the case. The Agency argued against placement with Grandmother and asked the court to terminate reunification services and set a section 366.26 hearing. Both parents argued that Z.M. should be placed with Grandmother.

The court found by clear and convincing evidence that both parents failed to participate regularly and make substantive progress toward their case plans, terminated reunification services, and set a section 366.26 hearing for December 17, 2009. The court further found that concerns over the grandmother's ability to protect Z.M. from her mother overcame the statutory preference for placement with a relative and adopted the Agency's recommendation that Z.M. not be placed with Grandmother.

Mother filed this timely petition under California Rules of Court, rule 8.452.[4]

DISCUSSION

I. *Reasonable Services*

Section 366.21, subdivision (e) governs six-month review hearings. With respect to children who are under three years old when removed from their parents, it authorizes the court to set a hearing pursuant to section 366.26 if it finds by clear and convincing evidence that the parents failed to participate regularly and make substantive progress in a court-ordered treatment plan. But if reasonable services were *not* provided, the court

[4] California Rules of Court, rule 8.456, which Mother also cites, is inapplicable because it pertains to petitions to review placement orders made after termination of parental rights.

must continue the case for a 12-month permanency planning hearing. (§ 366.21, subd. (e).)

Here, Mother contends the court should have continued the case because she was not provided with reasonable reunification services. In assessing Mother's contention we view the evidence in a light most favorable to the court's findings, resolving conflicts and construing all reasonable inferences in support of the judgment. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75; *In re Julie M.* (1999) 69 Cal.App.4th 41, 46.)

Although what constitutes "reasonable" reunification services varies in each case with the particular needs of the family, as a general matter reunification services are adequate if: (1) the case plan identifies the problems leading to the loss of custody; (2) the offered services are designed to remedy those problems; and (3) the agency maintains reasonable contact with the parent and makes reasonable efforts to assist that parent in areas in which compliance proves difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) The record in this case establishes that Mother was offered numerous reunification services tailored to her cognitive and mental health issues, but that she failed to make use of them. The Agency arranged for regular visitation, and Mother persistently missed visits or showed up late. When she did show up, Mother seemed to have little interest in or ability to engage with her child. Mother's parenting evaluator attempted to help her interact with Z.M., but Mother had difficulty taking direction. Mother was referred to Through the Looking Glass to be assessed for developmentally appropriate services, and she consistently missed or was late to her appointments. The Agency made a series of referrals for psychiatric services, medication and parental training services, and Mother failed to avail herself of these as well. The caseworker also went to considerable lengths to get Mother to apply for services at the Regional Center, contacting the center on six different occasions and arranging Mother's transportation to her intake interview.

The services offered to Mother were reasonably designed to address her cognitive and mental health issues and the Agency was appropriately diligent in attempting to help Mother comply with them. But it is not the Agency's responsibility to "take the parent

by the hand" (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5) to ensure she participated in the services offered to her. The removal of Z.M. from Mother's care put Mother on notice regarding the path she should follow to get her child back. Here, regrettably, Mother could not take the first meaningful steps along the way in spite of considerable assistance and encouragement. There seems no real prospect that the circumstances will change if Mother is provided another six months of services. "A noncustodial parent may not refuse to participate in reunification treatment programs until the final reunification review hearing has been set and then demand an extension of the reunification period to complete the required programs. [Citations.] Neither may a parent wait silently by until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing." (*Los Angeles County Dept. of Children Etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1092-1093; *In re Michael S.*, *supra*, at p. 1463, fn. 5.)

Because we affirm the juvenile court's finding on its merits, and in recognition of the import of these proceedings to Z.M. and her family, we need not and do not also address the Agency's argument that Mother waived her right to challenge the adequacy of reunification services in this court.

II. *Placement*

Mother also contends there is no evidence to support the juvenile court's decision not to place Z.M. with Grandmother. This contention, too, is unpersuasive.

We reject the Agency's assertion that this challenge to Z.M.'s placement is procedurally improper because the placement decision cannot be reviewed on a writ petition challenging the order setting the section 366.26 hearing. Section 366.26, subdivision (*l*) mandates review by extraordinary writ, not only of orders setting the section 366.26 hearing, but of *all* orders made contemporaneously with the setting order. (*In re Tabitha W.* (2006) 143 Cal.App.4th 811, 815-817; *In re Merrick V.* (2004) 122 Cal.App.4th 235, 248; *In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1023.) " 'Of the many private and public concerns which collide in a dependency proceeding, time is

among the most important. [Citation.]' . . . . Because section 366.26, subdivision (*l*) promotes these paramount interests by expediting ' "finality in dependency proceedings" ' [citation], we cannot ascribe to the Legislature any intention other than to subject to the bar of section 366.26, subdivision (*l*) all orders issued at a hearing at which a setting order is entered. The goals of expedition and finality would be compromised if the validity of these types of contemporaneous, collateral orders were permitted to be raised by appeal from the order itself or from a later permanent planning order and therefore allowed to remain undecided until well after the permanent plan was decided upon. The desired expedition and finality obviously would be most threatened when the permanent plan was adoption and termination of parental rights, the preferred plan which *must* be ordered if the child is found to be adoptable and the juvenile court cannot make any of the findings set out in section 366.26, subdivision (c)(1)(A) through (D)." (*In re Anthony B., supra,* 72 Cal.App.4th at pp. 1022-1023, quoting *In re Charmice G.* (1998) 66 Cal.App.4th 659, 668.)

On the merits, however, we are unpersuaded by Mother's challenge to the juvenile court's placement. "We review a juvenile court's custody placement orders under the abuse of discretion standard of review; the court is given wide discretion and its determination will not be disturbed absent a manifest showing of abuse. [Citations.] 'Broad deference must be shown to the trial judge. The reviewing court should interfere only " 'if we find that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did.' " ' " (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.) Here, Mother had twice attacked Grandmother in her own home, resulting in Mother's involuntary psychiatric hospitalization. Grandmother disagreed with the allegations of neglect, did not believe Z.M. should have been removed from Mother's care, and minimized the significance of the attacks as Mother simply "los[ing] her temper."

We also consider it significant that Grandmother questioned the "CPS rule" against hitting children and slapped Z.M. in the social worker's presence for minor misbehavior. Grandmother's practice to "hang the belt around her neck" to get her own

children to stop misbehaving raises more questions than answers. The social worker had serious concerns about Z.M.'s emotional and physical safety were she to be placed with Grandmother. Even the father's child development expert testified that placement with Grandmother raised safety concerns for Z.M. and questioned the truth of the grandmother's claim that she never hit her own children. While we have no reason to doubt that Grandmother loves her granddaughter, the evidence supports the court's decision not to place Z.M. in her care.

DISPOSITION

The order to show cause is discharged, and the petition for extraordinary writ is denied on the merits. (§ 366.26, subd. (*l*); Cal. Rules of Court, rule 8.452(i); see *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rule 8.264(b).)

Siggins, J.

We concur:

McGuiness, P.J.

Pollak, J.